80-491

No.

Supreme Court, U. S.
FILED
SEP 26 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM A. BURLESON
on behalf of himself and in
behalf of his Chow dog, Pirate,
Petitioner,

v.

CARTER R. HOWARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

WILLIAM A. BURLESON
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QUESTION PRESENTED

Whether or not the Plaintiff-Petitioner in an award as a result of an injury to his dog is entitled to a computation of damages for emotional distress, loss of services, and companionship.

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CARTER R. HOWARD,
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—

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, William A. Burleson, respectfully prays that a writ of certiorari issue to review the memorandum opinion and judgment, District of Columbia Court of Appeals filed in this proceeding on May 30, 1980, and order denying petitioners request for reconsideration en banc, dated July 9, 1980. (See Appendix, pp. 7a).

OPINION BELOW

The D.C. Court of Appeals, affirmed the Memorandum Opinion and Judgment Settlement Agreement, Minute Entry and Judgment of lower Court dated August 14,

1979 (Appendix Pg. 9a) and by Order dated July 9, 1980, denied Petitioner's petition for reconsideration and hearing en banc. (Appendix Pg. 7a).

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257, as amended to July 29, 1970, Public Law 91-358, Title 1, Section 172(a), 84 Stat. 590. The ORDER of the Appellate Court was entered on July 9, 1980. (Appendix, Pg. 7a).

"On consideration of appellant's petition for rehearing or rehearing en banc, it is

ORDERED by the division that appellant's petition for rehearing is denied, and it appearing that no judge has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied."

STATEMENT OF THE CASE

The facts in the case arise from an automobile accident occurring on November 10, 1979. Plaintiff-Petitioner's vehicle was hit in the rear by Defendant-Respondent's vehicle causing property damage and injury to Plaintiff-Petitioner's dog. Defendant-Respondent was alleged to be driving under the influence of alcohol at the time of the accident.

Damage to Petitioner's motor vehicle amounted to $856.23. In addition, Plaintiff-Petitioner's dog suffered traumatic glaucoma as a result of his injuries. These injuries rendered the dog, Pirate, totally blind and resulted in gross physical disfigurement and personality changes.

Prior the accident, Plaintiff-Petitioner's dog, Pirate, was in good health.

The Plaintiff-Petitioner's dog is a Chow which has been recognized as an unusually gifted dog "credited with great scenting powers with staunchness on point, and with cleverness in hunting tactics." *The Complete Dog Book,* American Kennel Club, Howell Book House (1972). This breed is usually a one-man dog which is loyal and devoted to its owner. *The Complete Puppy and Dog Book,* Norman N. Johnson, D.V.M. Atheneum (1977). Prior to his injury, the Plaintiff-Petitioner relied upon his dog as a watch dog for both his residence and his office. The dog was his constant and loyal companion and was a show dog.

Since the accident, and because of his injuries received in the accident, this dog has become totally blind, is grossly disfigured, has lost equilibrium, has suffered a personality change and is under constant medical treatment. In addition, Petitioner has incurred substantial medical expenses in an attempt to treat his dog's injuries and provide him with some measure of comfort. Petitioner's pretrial statement provides uncontradicted evidence that he has already sustained approximately $410.00 in expenses for his dog's treatment. In addition, based upon an additional eight years of life, the dog will require medical treatment approximated at $20.00 per month for future medical care, money for convalescent kennel care and an estimated $200.00 for removal of his eyeballs. However, the trial judge awarded Plaintiff-Petitioner $200.00 for the value of his dog and denied medical expenses or money for pain and suffering. The order specifically reserved the right of Plaintiff-Petitioner to appeal the court's denial of punitive damages and claims for pain and suffering. (See Appendix Pg. 17a). A notice of appeal was filed on September 10, 1979. (See Appendix Pg. 15a.)

On May 30, 1980 the Appellate Court (See Appendix Pg. 9a) affirmed the ruling of the trial court. The Plaintiff-Petitioner filed a Petition for Rehearing and en Banc Hearing on June 12, 1980 and on July 9, 1980 the petition was denied. (See Appendix Pg. 7a).

STATUTES INVOLVED

Fifth Amendment, United States Constitution

> "No person shall . . . be deprived of life, liberty, or property without due process of law . . . ."

REASONS WHY THE WRIT SHOULD BE GRANTED

In awarding compenstation for injury to animals some courts hold that recovery for mental or emotional distress is not permitted and the D.C. Court of Appeals in its Memorandum Opinion and Judgment stated, "We are not persuaded to recognize appellant's claim for emotional pain and suffering for the dog's injuries by the reasoning of the authority he cites, *Infante et ux., v. Leith,* 85 P.R.R. 24 (1962)." (See Appendix Pg. 9a.)

However there is a trend today in the United States to give an increasing amount of protection to the interest in freedom from emotional distress.

In *Infante et ux., supra,* plaintiff's dog was attacked by dogs owned by the defendant and was seriously injured. The trial court awarded plaintiffs the medical expenses. On appeal the court held that the "trial court erred in failing to consider as compensable damages the physiological and emotional disturbances, including the plaintiff's mental anguish and suffering." The court based its reasoning on the fact that ownership and enjoyment of property is a

fundamental constitutional right and that the suffering that the plaintiffs experienced upon seeing their pet incapacitated was an invasion of that right of enjoyment. The facts revealed that the plaintiffs have owned the dog for ten years and his injuries and resulting useless state caused them intensive moral anguish, nervous disturbances, nuisance and vexation . . ." *Id.* at 31-31. See also *Garland v. White*, 368 S.W.2d 2 (Tex. Civ. App. 1963). *La Porte v. Associated Independents Inc.*, 63 So.2d 26 (Fla. 1964). In a recent case a trial court judge held that a pet occupied a special position between personal property and a human and thus the woman was entitled to damages for her mental anguish resulting from an animal hospital's mistake. *Corso v. Crawford Dog and Cat Hospital, Inc.*, 415 N.Y.S.

In *Corso, supra,* plaintiff, owner of a poodle, brought her dog to the defendant's premises for treatment. Defendant advised her that the dog would have to be put to sleep. After the dog was put to sleep, defendant agreed to transfer the dog's body to an organization which would arrange a funeral for the dog.

Plaintiff had arranged an elaborate funeral, including a casket, headstone, and a service which was to be attended by plaintiff's two sisters and a friend. Upon opening the casket, plaintiff found the body of a dead cat rather than her former pet dog.

The court, ruling in plaintiff's favor, found that the wrongful withholding and destruction of the dog's body was actionable as was the loss of plaintiff's rights to memorialize her dog. Accordingly, the court held that plaintiff's mental shock was compensable. Furthermore, in *Corso, supra,* the Court overruled prior case law to the effect that a pet is only an item of personal property.

Appellant states that he was denied equal treatment of the law and his property was taken without due process of law. *Amendment V, United States Constitution.*

CONCLUSION

The Petitioner asks that the Petition for a Writ of Certiorari to the District of Columbia Court of Appeals be granted.

Respectfully submitted,

William A. Burleson
1000 Pennsylvania Ave., S.E.
Washington, D.C. 20003
Petitioner Pro Se

APPENDIX A

DISTRICT OF COLUMBIA
COURT OF APPEALS

[Filed Jul 9 1980 – Hugh E. Kline, Acting Clerk]

No. 79-983

WILLIAM A. BURLESON, ET AL.,
Appellant,

v. CA 10888-77

CARTER R. HOWARD,
Appellee,

BEFORE: Newman, Chief Judge,* Kelly, Kern, Gallagher, Nebeker, Harris,* Mack, Ferren, Pryor, Associate Judges, and Yeagley, Associate Judge, Retired.*

ORDER

On consideration of appellant's petition for rehearing or rehearing en banc, it is

ORDERED by the division that appellant's petition for rehearing is denied, and it appearing that no judge has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM.

(* - Merits Division)

Copies to:

Honorable Edward A. Beard

Clerk, Superior Court

William A. Burleson
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Washington, D.C. 20003

Stephen P. Zachary, Esquire
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APPENDIX B

DISTRICT OF COLUMBIA
COURT OF APPEALS

[Filed May 30 1980 — Alexander L. Stevas, Clerk]

No. 79-983 January Term, 1980

WILLIAM A. BURLESON,
Appellant,
v. 10888-77

CARTER R. HOWARD,
Appellee.

Appeal from the Superior Court of the
District of Columbia
Civil Division

(Hon. Edward A. Beard, Ret., Trial Judge)

(Submitted May 22, 1980 Decided May 30, 1980)

Before: Newman, Chief Judge, Harris, Associate Judge, and Yeagley, Associate Judge, Retired.

MEMORANDUM OPINION AND JUDGMENT

Appellant Burleson brought suit to recover for (1) damages to his automobile; (2) injury to his dog; (3) his own pain and suffering for the dog's injuries; and (4) punitive damages. Appellant's claims of error[1] relate to

[1]Appellant also contends that the court erred in allowing his retained counsel to intervene, in failing to order his file from counsel, in denying him equal treatment of the law, and in causing his property to be taken without due process of law. We find these contentions to be without merit.

the court's grant of partial summary judgment in favor of appellee and to the measure of damages. We affirm.

In response to appellant's claims that resulted from the automobile accident on November 10, 1974, appellee filed on January 17, 1978, a motion for summary judgment in which he contended that the only compensable allegations of the complaint were those relating to the fair market value of the dog. Appellant filed a motion in opposition.

On March 28, 1978, after hearing argument on the motion, the court granted partial summary judgment dismissing all of appellant's claims with prejudice, with the exception of the claim for property damage to his automobile and the claim for the fair market value of his dog and/or the medical and hospital expenses incurred in the treatment of the dog.

Appellant filed a motion to revise the order or in the alternative to certify the case; appellee filed an opposing motion and the court denied the motion.[2]

After a pretrial conference,[3] a non-jury trial commenced. The court heard uncontradicted testimony that the current monetary property value of the dog was approximately $200, and that the necessary medical treatment for the animal exceeded $200. The court entered judgment for appellant in the amount of $200, plus interest and costs.

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[2]An order striking an item of damages does not finally dispose of the rights of the parties and, therefore, is not appealable. *Brown v. Randle & Garvin*, D.C.App., 32 A.2d 104 (1943).

[3]Appellant's claim for the property damage to his automobile was settled for $600.00 during these proceedings. A fee arrangement was also resolved for his counsel, who had withdrawn from participation in the case.

Summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Super. Ct. Civ. R. 56(c); *Nader v. de Toledano,* D.C.App., 408 A.2d 31, 41, *rehearing and rehearing en banc denied* (1979); *Starks v. N.E. Ins. Co.,* D.C.A. p. 408 A.2d 980, 982 (1979); *Burch v. Amsterdam Corp.,* D.C.App., 366 A.2d 1079, 1083-84 (1976); *Yates v. District Credit Clothing, Inc.,* D.C.App., 241 A.2d 596, 598 (1968).

In reviewing rulings on such motions, our function is to determine whether any such issue of fact pertinent to the ruling exists. In this case, the court struck appellant's claims for damages for his own emotional pain and suffering for the dog's injuries, as well as the claim for punitive damages after concluding that no issue of material fact existed respecting these claims and that appellee was entitled to judgment as a matter of law.

The material facts relating to these claims were not in dispute. The dog, Pirate, sustained extensive injuries as a result of the automobile accident. The measure of damages for this type of claim is governed by D.C. Code 1973, § 47-2004,[4] which codified the common law rule that a dog is "personal property" and its owner may recover for a willful or negligent injury thereto. *Scarfield v. Richardson,* 76 U.S.App.D.C. 378, 133 F.2d 340 (1943). Section 47-

> Any dog wearing the tax tag hereinbefore provided for shall be regarded as *personal property* in all the courts of said District, and any person

[4]This section has since been repealed. *See* Act of Oct. 18, 1979, D.C. Law 3-30, § 14(a), DCR 765.

> injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (Emphasis added.)

There are two basic standards for determining the measure of damages for injury to personal property. First, there is "the reasonable cost of repairs to restore the property to its former condition." The second standard is the diminution in value of the property immediately before and after injury. *Gamble v. Smith*, D.C.App., 386 A.2d 692, 694 (1978); *Smith v. Brooks*, D.C.App., 337 A.2d 493, 494 (1975).

The pretrial order provided for an award of damage for the fair market value of the dog and/or the cost of medical expenses. In light of the above standards, the court found the first standard inapplicable to the facts of the case since medical treatment could not restore the dog to his former condition and the treatment costs exceeded the fair market value of the dog prior to the accident. Consequently, the court found the second standard controlling and awarded damages for the fair market value of the dog.

Although one might sympathize with appellant,[5] we cannot say the judgment was clearly wrong or without evidentiary support. *Max Holtzman, Inc. v. K&T Co.*, D.C.App., 375 A.2d 510, 512 (1977); D.C. Code 1973, § 17-305(a).

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[5]We are not persuaded to recognize appellant's claim for emotional pain and suffering for the dog's injuries by the reasoning of the authority he cites, *Infante et ux., v. Leith*, 85 P.R.R. 24 (1962).

Finally, we consider the issue of punitive damages. It is settled that such damages are awarded to punish a person for outrageous conduct, such as maliciousness, gross fraud, or willful disregard of another's rights. *Feltman v. Sarbov*, D.C.App., 366 A.2d 137, 141 (1976); *Price v. Griffin*, D.C.App., 359 A.2d 582, 588 (1976); *Wanis v. Zwennes*, D.C.App., 364 A.2d 1193 (1976); *Riggs National Bank v. Price*, D.C.App., 359 A.2d 25, 28 (1976).

Appellant contends that his allegation that appellee was driving under the influence of alcohol required the court to allow him to prove this allegation. In support of his position opposing punitive damages, appellee relies upon the decision in *Giddings v. Zellan*, 82 U.S.App.D.C. 92, 160 F.2d 585, *cert. denied*, 332 U.S. 759 (1947). In *Safeway Trails, Inc. v. Schmidt*, D.C.A. p., 225 A.2d 317, 319 (1967), this court considered the rule of *Giddings, supra*. We said:

> There the highest court of this jurisdiction ruled that under Maryland law punitive damages were not allowable in a case involving negligent operation of a motor vehicle. In reaching its conclusion the court quoted at length from Davison v. Gordon, 183 Md. 129, 36 A.2d 699, 156 A.L.R. 1109 (1944), also a case of negligent operation of an automobile. It is our view that *Giddings*, despite some general language in the opinion, holds only that Maryland law does not permit punitive damages for injuries inflicted by negligent operation of a motor vehicle. . . . [*Id.* at 319-20; footnote omitted.]

We conclude, as the court did in *Giddings, supra* at 94, that "drunkenness" is not synonymous with "malice, fraud, nor evil intent." In light of the requisite showing for

punitive damages, the court did not err in striking this claim. In sum, we find no basis for reversal. Accordingly, it is

ORDERED and ADJUDGED that the judgment appealed from is affirmed.

PER CURIAM.

FOR THE COURT:

/s/ Alexander L. Stevas
Alexander L. Stevas,
Clerk.

Copies to:

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Clerk, Superior Court of the District of Columbia

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APPENDIX C

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

WILLIAM A. BURLESON, on behalf of himself and in behalf of his Chow dog, Pirate Plaintiff	:	
vs.	:	Civil Action No. 10888-77
CARTER R. HOWARD Defendant	:	

NOTICE OF APPEAL

Notice is hereby given that plaintiff appeals to the District of Columbia Court of Appeals from the following orders and judgments entered in this case:

1) Order of March 30, 1978 granting partial summary judgment;

2) Order of November 30, 1978 denying motion to revise order of March 30, 1978 or in the alternative to certify the case;

3) Order of February 6, 1979 granting intervention;

4) Judgment of August 14, 1979;

5) Judgment order of August 30, 1979.

Names and addresses of
attorneys to be served:

Samuel F. McNeil, Esq.
1215 Nineteenth Street, N.W.
Washington, D.C. 20036

/s/ William A. Burleson
1000 Pennsylvania Ave., S.E.
Washington, D.C. 20003
544-4111

APPENDIX D

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

William A. Burleson
Plaintiff

vs.

Calendar No. 1997-J
Civil Action No. 10888-77

Carter R. Howard
Defendant

PRE-TRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

SETTLEMENT AGREEMENT, MINUTE ENTRY AND JUDGMENT

Plaintiff's claim for property damage to his vehicle is settled, satisfied and dismissed for the amount of $600.

From this settlement intervenor Slater is to be paid the sum of $150 in compromise of his claim presented by intervention, the same being due and payable to him on the next business day following receipt of settlement proceeds by plaintiff from defendant.

Demand for jury trial in relation to all claims presented in relation to the Chow dog is withdrawn and such issues are presented to the undersigned for trial on the merits. Uncontradicted credible testimony has been received to the effect that the current monetary property value of the dog is $200 or more and, it being agreed that medical treatment necessary for recovery of the dog exceeds this

amount, judgment is rendered for this portion of the cause in the amount of $200

The undersigned endorses the prior summary ruling of Judge Nunzio and has thus refused consideration of any claim to punitive damage or of pain and suffering sustained by the dog.

It is the intent of the parties to dispose of this case and at the same time reserve to the plaintiff a right of appeal respecting a refusal of the court to entertain a claim for punitive damage and claim for pain and suffering to an animal.

The clerk is accordingly directed to enter a judgment against defendant in favor of plaintiff in the amount of $200 on the 10th day hereafter unless the finding made herein is previously discharged and defendant may at his pleasure discharge the finding by payment to plaintiff of $650 and to intervenor of $150.

Mental and emotional distress to plaintiff himself as a result of trauma to his dog is also preserved as potential issue on appeal.

Attorneys authorized to act:

/s/ William A. Burleson
Plaintiff

/s/ Stephen P. Zachary
Defendant

Dated August 14, 1979

/s/ Illegible _____
Pre-Trial Judge